

Transfer value regulations: Gap analysis checklist

The Pension Scheme Act 2021 provides for new conditions allowing trustees to stop transfers being processed, restricting statutory transfer rights. This is intended to combat pension scams. The final legislation has now been published and became effective from 30 November 2021.

The final legislation introduces two conditions, one of which need to be satisfied before a transfer can proceed. If neither of the conditions are satisfied, then trustees can remove the member's statutory right to a transfer.

The new rules will require trustees and their administrators to carry out additional checks on the majority of transfers. Administrators will need to have the appropriate processes in place to carry out the checks required by the new legislation. Trustees will need to consider how to exercise judgment in relation to some of the warning signs.

We have prepared a high-level gap analysis that can be used to ensure your scheme is addressing all of the new regulations.

The conditions

The First Condition

This is satisfied if the receiving scheme is under one of the following categories:

- a) a public sector scheme,
- b) an authorised DC Master Trust,
- c) an authorised collective money purchase scheme.

Based on our analysis of transfers from XPS administered pension schemes, we expect that only around 2% of transfers will meet the **First Condition**.

The Second Condition

Applies to all transfers where the **First Condition** is not satisfied. The **Second Condition** is satisfied where trustees determine that no 'red flags' are present.

The **Second Condition** requires trustees to decide whether a number of 'red flags' and 'amber flags', as defined in the regulations, are present. Trustees can require members to provide evidence to help with this decision.

The identification of an amber flag can lead to a red flag if certain action is not taken.

We expect that most transfers will need to be **assessed against the Second Condition**.

High-level gap analysis

This gap analysis is designed to be worked through quickly and can be used to ensure you are fully addressing the new regulations. XPS' Scam Protection Service can help you complete the checklist, identify any gaps and help you comply with the new requirements.

General considerations

Yes

To do

- | | | |
|---|--|--|
| 1. Do you intend to follow the legislation for non-statutory transfers e.g. those provided to members within a year of retirement from your scheme (if applicable)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you know how you will inform members within one month following their request for a transfer value that: <ul style="list-style-type: none">• their transfer cannot proceed unless either condition is satisfied?• after a decision has been made, if neither condition is satisfied, that they will have lost their statutory right to transfer? | <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> |
| 3. Do you have processes in place to ensure you document any rationale in coming to decisions? And for reviewing decisions if further evidence has been provided by the member? | <input type="checkbox"/> | <input type="checkbox"/> |






First Condition

- | | | |
|---|--------------------------|--------------------------|
| 1. Do you have the necessary processes in place to check the status of the receiving scheme for all transfers and whether it meets the First Condition? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you know how you will inform members that their receiving scheme satisfies the First Condition and so their transfer can proceed? | <input type="checkbox"/> | <input type="checkbox"/> |

Second Condition

- | | | |
|---|--------------------------|--------------------------|
| 1. Do you have processes in place and sufficient knowledge of the financial market to be able to identify the presence of any red or amber flags? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Have you agreed the level of guidance that will be provided to members on the evidence they need to provide to enable you to assess whether any red or amber flags are present? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you have an agreed process for determining if the member has provided sufficient evidence to assess the transfer against the Second Condition? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Do you have processes in place to inform members of the requirement to take guidance from the Money and Pensions Service if an amber flag is identified and to collate evidence from members that they have taken the required guidance? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Do you have sufficient checks in place to ensure that the member has received appropriate financial advice regarding their transfer from an authorised individual? | <input type="checkbox"/> | <input type="checkbox"/> |



| | Yes | To do | |
|--|--------------------------|--------------------------|---|
| 6. Do your processes check with members whether the transfer is a result of unsolicited contact from a third party they have no relationship with, whether an incentive to transfer has been offered or if the member has been pressured to transfer? | <input type="checkbox"/> | <input type="checkbox"/> |  |
| 7. Do you have a processes to capture and hold information about transfer volumes in your scheme including in relation to the same receiving scheme or advice from the same adviser and collate and consider knowledge of other schemes? | <input type="checkbox"/> | <input type="checkbox"/> |  |
| 8. Do you have processes to identify that the information received from the member is in line with that requested, is genuine and was provided directly by the member when assessing the transfer against the amber flags? | <input type="checkbox"/> | <input type="checkbox"/> |  |
| 9. Do you have a process to check that members transferring to an occupational pension scheme can demonstrate an employment link and those transferring to a Qualifying Registered Overseas Pension Scheme (QROPS) can demonstrate the residency link? | <input type="checkbox"/> | <input type="checkbox"/> |  |
| 10. Do you have process in place to assess the following about the receiving scheme: | | | |
| • whether it offers high risk or unregulated investments? | <input type="checkbox"/> | <input type="checkbox"/> | |
| • whether the member is being charged high fees or if the charging structure is unclear? | <input type="checkbox"/> | <input type="checkbox"/> |  |
| • whether the investments in the are complex, unclear or appear to be unorthodox? | <input type="checkbox"/> | <input type="checkbox"/> | |
| • whether the receiving scheme offers overseas investments? | <input type="checkbox"/> | <input type="checkbox"/> | |

XPS' Scam Protection Service can help you meet many of the requirements of the transfer value regulations and we can work directly with your administrators to ensure you are fully compliant. Our service was set up in 2015 and since then we have helped over 350 schemes, reviewing over 6,000 cases for scam warning signs.

For further information, please get in touch with **Colin Miller, Helen Cavanagh, Mark Barlow** or speak to your usual XPS Pensions contact.



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This communication is based on our understanding of the position as at the date shown. It should not be relied upon for detailed advice or taken as an authoritative statement of the law.